

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2502 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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GAFAR GANIBHAI MODAN

Versus

COMMISSIONER

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Appearance:

MR MA KHARADI for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/12/1999

ORAL JUDGEMENT

1. The petitioner is a detenue under PASA who has been detained by virtue of an order passed by the Police Commissioner, Rajkot city, Rajkot on 15th March 1999 u/s 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for

short]. The detaining authority took into consideration one case registered against the petitioner under the Bombay Prohibition Act with Rajkot Taluka police station on 11th March 1999. The detaining authority also took into consideration the statements of two anonymous witnesses recorded on 12th March 1999 and came to a conclusion that the activities of the petitioner are that of a bootlegger as defined under the PASA Act which are detrimental to public order. It is not possible to resort to less drastic remedy in the form of proceeding u/s 57[c] of the Bombay Police Act and that, it was necessary to detain the petitioner for immediately preventing him from pursuing his illegal and anti social activities. The authority also exercised the powers u/s 9[2] of the PASA Act and it did not disclose the identity of the two anonymous witnesses, whose statements have been recorded and are taken into consideration by the detaining authority while passing the order. The authority recorded that the facts stated by the witnesses are correct and the fear expressed by the witnesses qua the petitioner in respect of the person and property of the witnesses is genuine and therefore, there is need for exercise of powers u/s 9[2] of the PASA Act.

2. The detinue - petitioner challenges the order of detention on various counts. The main ground is that there is only one prohibition cases registered against the petitioner. The authority has not recorded a subjective satisfaction that this activity of the petitioner is detrimental to public health. That the authority has tried to give an eye-wash to the need for considering alternative less drastic remedy by stating that proceedings u/s 57[c] of the Bombay Prohibition Act, 1951 cannot be resorted to as two convictions are required therefor and the real and genuine alternative remedy in nature of proceedings u/s 56 are not considered. The order, therefore, suffers from non-application of mind.

3. Mr.Gondalia appearing for Mr.Kharadi, learned advocate for the petitioner has reiterated the grounds stated above. He submitted that, consideration of section 57[c] of the Bombay Police Act will have two fold implications, one is that the detaining authority has tried to give an eye-wash to the need for considering the less drastic remedy. In fact, proceedings u/s 57[c] of the Act cannot be considered as a relevant factor, since only one case is registered against the petitioner, and therefore, the authority has considered a factor, which is not relevant, which reflects non-application of mind. He further submitted that the authority has not taken

into consideration the available less drastic remedy in form of proceedings u/s 56 of the Act. This non-consideration of less drastic remedy also reflects non-application of mind. The authority, therefore, has not applied its mind which would vitiate the proceedings. The petition may, therefore, be allowed.

4. Mr.H.H.Patel, learned AGP appearing for respondents has opposed this petition. He submitted that the authority has recorded subjective satisfaction for the need to detain the petitioner. The less drastic remedy is considered by the detaining authority and whether it is sufficient or not, may not be gone into and therefore, the petition may be dismissed.

5. A perusal of the grounds of detention indicates that only one offence under the Bombay Prohibition Act is registered against the petitioner, which is even pending investigation. The authority has taken into consideration provisions of section 57[c] of the Act by way of less drastic alternative remedy. In fact, there was no question of considering this provision when there were not even more than one offence registered against the petitioner and there was no question of conviction in two or more cases of the petitioner. This provision was, therefore, not a relevant provision that was required to be considered by the detaining authority. The authority has, therefore, taken into consideration a factor which is not relevant while arriving at a subjective satisfaction that detention under PASA is the only remedy that can be resorted to for immediately preventing the petitioner from pursuing his illegal and anti social activities.

5.1 Taking it in a slightly different angle, the authority has not considered the relevant available less drastic alternative remedy in the form of proceedings u/s 56 of the Act. This non-consideration of less drastic available remedy reflects non-application of mind and would vitiate the detention. This view is based on decision of this High Court in the case of Mahva Arjun Parmar v/s Commissioner of Police, Ahmedabad and ors. reported 1991 [1] GLR 481.

5.2 The outcome of the above discussion is that the order is based on consideration of an irrelevant factor, namely alternative remedy u/s 57[c] of the Act and is passed without considering a relevant factor namely, proceedings u/s 56[c] of the Act. This reflects that the order is passed in a casual and mechanical manner, without application of mind. This would vitiate the

detention and the petition, therefore, deserves to be allowed on this ground alone.

6. The petition is therefore allowed. The impugned order of detention dated 15th March 1999 passed by the Commissioner of Police, Rajkot is quashed and set aside. The detenue - Gafar Ganibhai Modan, is ordered to be set at liberty if not required in any other case. Rule is made absolute with no orders as to costs.

[ A.L.DAVE, J. ]

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